


sexual offense and second degree rape. (Compl. IV. "Statement of Claim") In 2010, plaintiff sought DNA testing under a new North Carolina statute. (Id.) Counsel was appointed for Washington and motions were filed. (Id.) Washington appears to argue that because trial transcripts are unavailable to him and to his counsel, the DNA tests were not undertaken and his constitutional rights have been violated. (Id.) He seeks approximately \$13,000,000.00 in monetary damages and may also seek injunctive relief. (Compl. V. "Relief Sought" and D.E. 3 - "Amended Complaint")

Washington originally named Assistant District Attorney Holt Trotman as the sole defendant. The claims in regard to Trotman focus on the DNA and trial transcript issues. As to this defendant and those issues, the matter is allowed to proceed. See Skinner v. Switzer, ___ U.S. ___, 131 S. Ct. 1289 (2011).

Attorney Bruce Mason is named as an additional defendant in the motion to amend [D.E. 3]. Washington attempts to make an ineffective assistance of counsel claim against Mason. However, Mason is not a proper party and is dismissed from the suit. As outlined in the amended complaint, Bruce Mason appears to have been appointed to represent Washington. A defense attorney, whether retained, court-appointed, or a public defender, does not act under color of state law when performing traditional functions as counsel. See Polk Cnty. v. Dodson, 454 U.S. 312, 317–24 (1981) (public defender); Hall v. Quillen, 631 F.2d 1154, 1155–56 (4th Cir.1980) (court-appointed attorney); and Deas v. Potts, 547 F.2d 800 (4th Cir.1976) (private attorney). All the claims within the complaint and amendments against Bruce Mason arise from his performance as defense counsel, and the claims and this defendant are dismissed as frivolous.

After review, the court finds the matter shall be ALLOWED to proceed against Holt Trotman and ALLOWS the motions to amend [D.E. 3 and 6]. Accordingly, the Clerk is DIRECTED to maintain management of the case. The court DENIES without prejudice petitioner's motion for summary judgment [D.E. 5] because it is premature. Lastly, the court DISMISSES Bruce Mason as a defendant along with the associated claims.

SO ORDERED. This, the 25th day of May, 2011.



James C. Fox
Senior United States District Judge